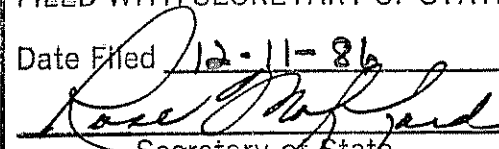


When Recorded Return to:  
Flood Control District  
3335 West Durango Street  
Phoenix, Arizona 85009

NO. <u>11626</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>12-11-86</u>
 Secretary of State

ECS FILE: IGA-86-08  
Project: RBM-600-0-502

INTERGOVERNMENTAL AGREEMENT  
SKUNK CREEK

This Agreement is between the Flood Control District of Maricopa County, a municipal corporation and political subdivision of the State of Arizona (hereinafter called DISTRICT), the State of Arizona, acting by and through the Arizona Department of Transportation (hereinafter called STATE), and the City of Peoria, a municipal corporation (hereinafter called PEORIA).

This Agreement shall become effective as of the date it is filed with the Secretary of State pursuant to Arizona Revised Statutes 11-952. DATE FILED WITH THE SECRETARY OF STATE Dec. 11, 1986.

STATUTORY AUTHORIZATION

The DISTRICT is empowered by Arizona Revised Statutes 48-3603 to enter into this Agreement.

The STATE is empowered by Arizona Revised Statutes 28-108 to enter into this Agreement.

PEORIA is empowered by Arizona Revised Statutes 11-952 to enter into this Agreement.

BACKGROUND

1. The DISTRICT is the local sponsor of a U. S. Army Corps of Engineers project known as the Phoenix, Arizona and Vicinity (including New River) Flood Control Project which includes the Arizona Canal Diversion Channel (ACDC). As the local sponsor, the DISTRICT is responsible for acquiring the necessary rights-of-way and relocating facilities. When the project is complete, stormwater runoff from the ACDC will flow through channels and the natural river courses along Skunk Creek, New River, and the Agua Fria to the Gila River. As part of its construction work, the U. S. Army Corps of Engineers will stabilize portions of the southeast bank of the channel along Skunk Creek. Excavation of the Skunk Creek channel between the confluence of the ACDC through the confluence with New River will result in the construction of shorter bridges at 83rd Avenue and the Outer Loop Highway.
2. PEORIA has a sports complex which is partially in the floodway and the floodway fringe of Skunk Creek. PEORIA recognizes that the area must remain as "open space" as required by the Phoenix, Arizona and Vicinity (including New River) Flood Control Project. PEORIA believes the channelization of Skunk Creek to the south of the sports complex will lessen the likelihood of the sports complex being inundated by floodwaters. The area now in the delineated floodway and floodway fringe would remain as open space but will not be subject to innundation by floodwaters from the 100 year event.

3. The STATE is designing a major transportation project known as the Outer Loop which will cross the proposed Skunk Creek Channel. For construction of the Outer Loop, the STATE needs fill material for approach ramps and roadway construction. The STATE proposes to designate the channel excavation for Skunk Creek as a borrow site for fill materials needed for construction of the Outer Loop Highway.

#### PURPOSE

4. The purpose of this agreement is to define the responsibilities of the DISTRICT, the STATE and PEORIA regarding the channelization of Skunk Creek from the confluence of the ACDC through the confluence with New River. This channelization of Skunk Creek will:

4.1. Provide conveyance for the 100 year flow ( $Q=35,000$  cfs, post project, fully developed conditions) past the City of Peoria Sports Complex so that the Sports Complex will not be subjected to flood damages from the 100 year event.

4.2. Define the cross section of Skunk Creek for the 83rd Avenue Bridge to be constructed by the DISTRICT.

4.3. Define the cross section of Skunk Creek for the Outer Loop Highway to be constructed by the STATE.

#### TERMS OF AGREEMENT

5. PEORIA will enter into a contract with a private engineering consulting firm to provide the engineering design and construction plans for the proposed channelization along Skunk Creek. These plans will include the cross sections for the bank stabilization to be constructed by the Corps of Engineers and consider future bank stabilization adjacent to the Sports Complex. The plans will be developed so that the top width of the channel in the vicinity of the Outer Loop Highway does not exceed 300 feet with the 100 year water surface elevation of approximately 1173 and the invert elevation of approximately 1160. The plans will be submitted to the STATE and the DISTRICT for review and approval. The DISTRICT will reimburse PEORIA for the charges of the engineering consulting firm for the engineering design and construction plans within forty-five days of submission of bills by PEORIA for payment. The DISTRICT will coordinate construction schedules with the Corps of Engineers and the STATE to avoid conflicts in construction operations.

6. The STATE will incorporate the plans for this channel excavation into its construction plans for the Outer Loop Highway and require the STATE'S construction contractor to excavate the channel as shown on the plans. The STATE will require that its construction contractor name both the DISTRICT and PEORIA as additional insureds on any insurance policies required for this project.

7. The DISTRICT and PEORIA agree to acquire, without cost to the State, necessary land rights for the channelization of Skunk Creek as shown on the

construction plans, and hereby certify that all rights will be acquired prior to the awarding of the STATE'S contract.

8. The DISTRICT and PEORIA agree to issue permits or the right, without cost to the STATE'S contractor, to excavate the material in accordance with the channel excavation plans.

9. PEORIA agrees to grant flowage easements (See Exhibit B) to the DISTRICT over floodway and fringe areas for all land in the floodway and fringe area as delineated by the Corps of Engineers, but only to the extent of any right, title or interest PEORIA may have in such land, in consideration of the bank stabilization and the 83rd Avenue Bridge to be constructed by others.

10. The DISTRICT will be responsible for operation and maintenance of the channel to assure conveyance for the 100 year flood flow as defined in Paragraph 4.1. The DISTRICT will also be responsible for the operation and maintenance of the southeast bank of the Skunk Creek Channel stabilized as part of the Corps of Engineers' project, as shown on Exhibit A.

11. PEORIA will be responsible for maintenance of the northwest bank of the Skunk Creek Channel between the Outer Loop right-of-way to the outlet of the ACDC as shown on the engineering plans discussed in Paragraph 5 above. PEORIA shall have no obligation to stabilize the northwest bank. PEORIA will also be responsible for the operation and maintenance of the 83rd Avenue Bridge and the bank stabilization areas constructed in conjunction with the Bridge south to the ADOT Outer Loop right-of-way on both sides. This maintenance will include rights-of-way owned by PEORIA and owned by the DISTRICT. PEORIA shall be obligated for such maintenance only after completion, inspection, approval and acceptance of the improvements for which PEORIA will be responsible. Acceptance by PEORIA shall not relive the DISTRICT or others from many obligation of indemnity provided in the Agreement.

12. The STATE will be responsible for operation and maintenance of the Outer Loop Highway and the bank stabilization areas constructed in conjunction with the Highway, within STATE right-of-way.

13. PEORIA will relocate, at its own cost, the water line and other utilities in the sports complex as may be impacted by the channel excavation as required as a result of the engineering plans discussed in Paragraph 5 above.

14. The DISTRICT will be responsible for preparation of design and plans and for construction of the 83rd Avenue Bridge over Skunk Creek channel and for relocating any utilities necessary for the construction of the Bridge. The design will include ties to the STATE's bank stabilization on both sides at approximately the mid-point between the two bridges and to the Corps of Engineers' bank stabilization on the southeast bank of the Skunk Creek channel.

15. PEORIA shall participate with the DISTRICT in final inspection of the 83rd Avenue Bridge to see that the Bridge was constructed in accordance with the approved plans and specifications. PEORIA will, upon completion of

construction and final acceptance of the Bridge, assume ownership and operate and maintain the Bridge in perpetuity as part of PEORIA'S road system at PEORIA'S sole expense, including maintenance of the stabilized banks to the STATE'S right-of-way.

16. The STATE will be responsible for preparation of design and plans and for construction of the Outer Loop Highway over the excavated Skunk Creek channel and for relocating any utilities necessary for the construction of the Highway. The design will include ties, on both sides, to the bank stabilization for the 83rd Avenue Bridge.

17. The DISTRICT will be responsible for applying for any necessary 404 Permit from the Corps of Engineers that might be required for the excavation of this Skunk Creek Channel.

18. The STATE will be responsible for preparing and publishing any environmental statements or assessments that may be necessary in conjunction with its construction of the Outer Loop Highway and designation of the channel excavation as a borrow site.

19. The DISTRICT will be responsible for the preparation of any delineations needed for flood insurance purposes.

20. The DISTRICT shall have the right to pass flows beneath the 83rd Avenue Bridge with no liability for any damage occurring to the Bridge due to floodwater except for damages arising from negligence on the part of the DISTRICT. The DISTRICT shall also have the right to pass flows beneath the Outer Loop Highway with no liability for any damage occurring to the Highway due to floodwater except for damages arising from negligence on the part of the DISTRICT.

21. The DISTRICT will exchange land with the STATE for right-of-way required for construction of the Outer Loop Highway over Skunk Creek for lands of equal value adjacent to New River for the purposes of the open space requirement of the DISTRICT'S flood control project.

22. The DISTRICT and the STATE agree to coordinate boring of test holes for foundation exploration for the 83rd Avenue Bridge and the Outer Loop Highway.

23. Copies of the documents authorizing each party to enter into this agreement are attached.

24. This agreement shall remain in full force and effect until completion of the construction projects described above; provided, however, Paragraphs 10, 11, 12, and 15 relating to maintenance and Paragraphs 25, 26, and 27 relating to liability shall remain in effect for a period of seventy-five years from the signing of this Agreement. This Agreement may be amended or terminated only upon written agreement of all parties but PEORIA and the DISTRICT may exchange maintenance responsibilities without consulting the STATE as long as the area is maintained as provided in this Agreement.

25. In connection with the construction and operation and maintenance of the Outer Loop Bridge and the bank stabilization areas constructed in conjunction with the Bridge, including the excavation of the Skunk Creek Channel during the construction period but excluding liability arising out of design of the channel, the STATE, to the extent permitted by law, agrees to indemnify and save harmless the DISTRICT and PEORIA, or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by an activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Agreement. The DISTRICT and PEORIA shall in all instances be indemnified against all liability, losses or damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damages as shall have been occasioned by the negligence of the DISTRICT or PEORIA. The above cost of damages incurred by the DISTRICT or PEORIA or any of their departments, agencies, officers or employees shall include reasonable attorneys' fees, costs and/or expenses incurred in the event of any such claim, whether arising out of litigation or otherwise.

26. In connection with the maintenance of the unstabilized northwest bank of the Skunk Creek Channel and the operation and maintenance of the 83rd Avenue Bridge and the bank stabilization areas constructed in conjunction with the Bridge, PEORIA, to the extent permitted by law, agrees to indemnify and save harmless the DISTRICT and the STATE, or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by an activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Agreement. The DISTRICT and the STATE shall in all instances be indemnified against all liability, losses or damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damages as shall have been occasioned by the negligence of the DISTRICT or the STATE. The above cost of damages incurred by the DISTRICT or the STATE or any of their departments, agencies, officers or employees shall include reasonable attorneys' fees, costs and/or expenses incurred in the event of any such claim, whether arising out of litigation or otherwise.

27. In connection with the operation and maintenance of the Channel to assure conveyance for the 100 year flood flow as defined in Paragraph 4.1 and the operation and maintenance of the southeast bank of the Skunk Creek Channel, the DISTRICT, to the extent permitted by law, agrees to indemnify and save harmless the STATE and PEORIA, or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by an activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Agreement. The STATE and PEORIA shall in all instances be indemnified against all liability, losses or damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement,

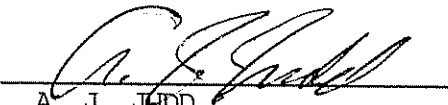
except such injury or damages as shall have been occasioned by the negligence of the STATE or PEORIA. The above cost of damages incurred by the STATE or PEORIA or any of their departments, agencies, officers or employees shall include reasonable attorneys' fees, costs and/or expenses incurred in the event of any such claim, whether arising out of litigation or otherwise.

28. In connection with the channel excavation, the DISTRICT, PEORIA, and the STATE agree to share equally any losses the STATE may suffer from claims, demands, and judgements of its contractor caused by construction delays attributable to water or wet conditions in the channel excavation area.

29. All parties hereto acknowledge that this agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511 of Arizona Revised Statutes.

30. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Section 12-1518 (B) and (C) of Arizona Revised Statutes, as amended.

STATE OF ARIZONA  
DEPARTMENT OF TRANSPORTATION

By:   
A. J. JUDD  
Title: Chief Deputy State Engineer

# County of Maricopa

State of Arizona

## Office of the Clerk

State of Arizona }  
County of Maricopa } ss.

*I, Cherie Pennington, Clerk of the Board of Supervisors*  
*do hereby Certify That* the following is a true and correct  
extract from the minutes of the Board of Supervisors meeting held November  
10, 1986:

INTERGOVERNMENTAL AGREEMENT APPROVED WITH THE CITY OF PEORIA AND  
ARIZONA DEPARTMENT OF TRANSPORTATION:

Motion was made by Mr. Koory and unanimously carried that the Board authorize the Chairman to sign an intergovernmental agreement between the Flood Control District, City of Peoria, and Arizona Department of Transportation for channelization of Skunk Creek from the confluence of the ACDC through the confluence with New River. The costs to the District are estimated at \$80,000 for the design of the channelization and \$1,000,000 for design and construction of the 83rd Avenue Bridge.

FLOOD CONTROL DISTRICT RECEIVED			
NOV 17 '86			
CH ENG		P & PM	
DEP		HYDRO	
ADMIN		LMG	
FINANCE		FILE	
C & D	2	MSM	
ENG			
REMARKS			

*In Witness Whereof, I have hereunto set  
my hand and affixed the Official Seal of the Board  
of Supervisors. Done at Phoenix, the County Seat  
this 12th day of November, 1986*  
*A. D.*

Sue Muchler, Flood  
Control  
File

*Cherie Pennington*  
Clerk of the Board of Supervisors

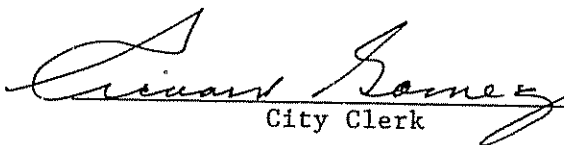
CERTIFICATION OF RECORDING OFFICER

I, Richard Gomez, the duly appointed, qualified and acting City Clerk of Peoria, Arizona, do hereby certify that the following extract from the minutes of the Regular Meeting of the Mayor and Council of the City of Peoria, Arizona, held on November 25, 1986 is a true and correct copy of the original minutes of such meeting on file and of record insofar as they relate to the matters set forth.

"Skunk Creek Channelization Agreement

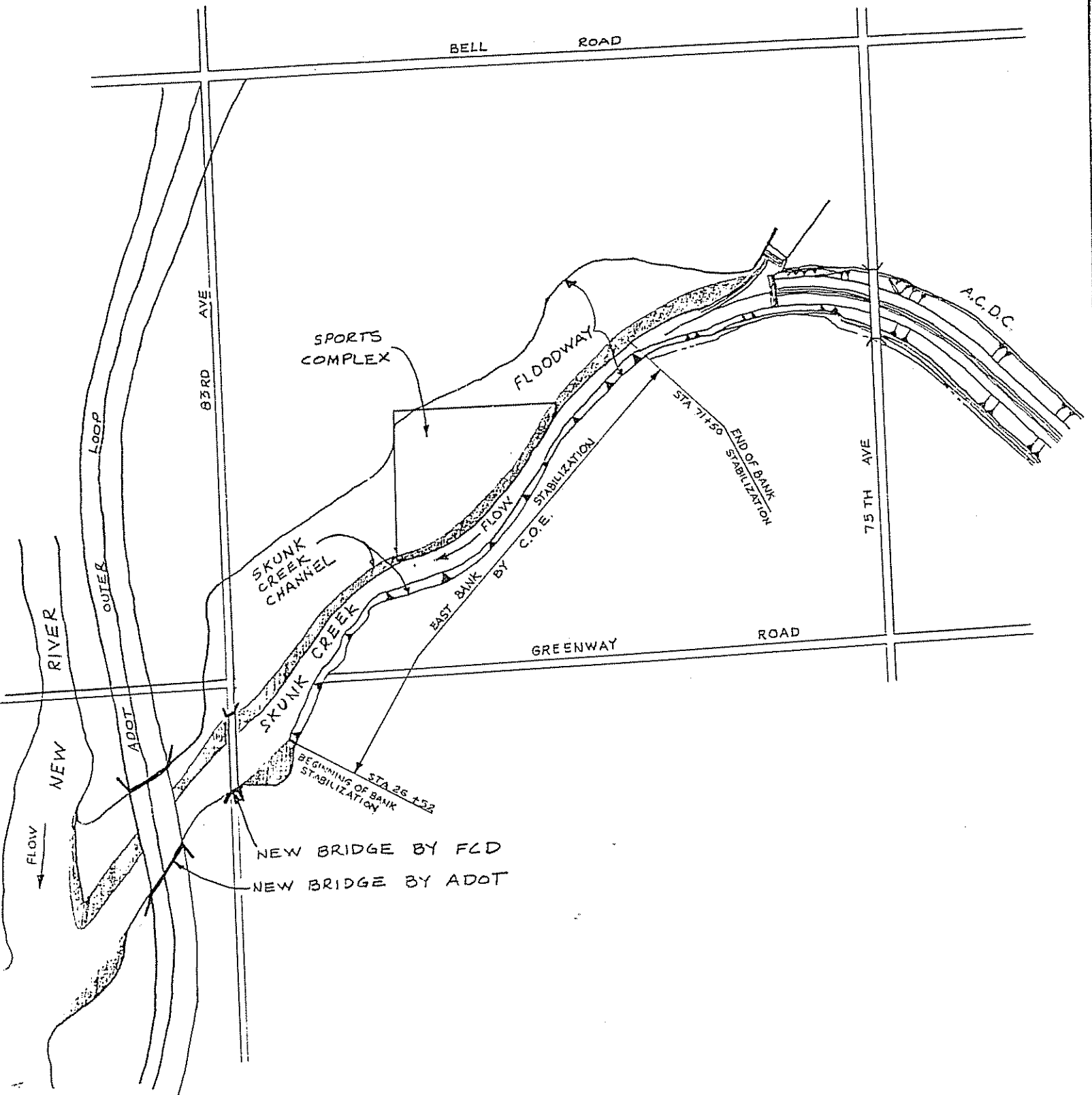
Councilman Palmer moved to approve and authorize the Mayor to sign the Intergovernmental Agreement between the Arizona Department of Transportation, the Maricopa County Flood Control District and the City of Peoria for the channelization of Skunk Creek. Motion seconded by Councilman Murillo and carried unanimously."

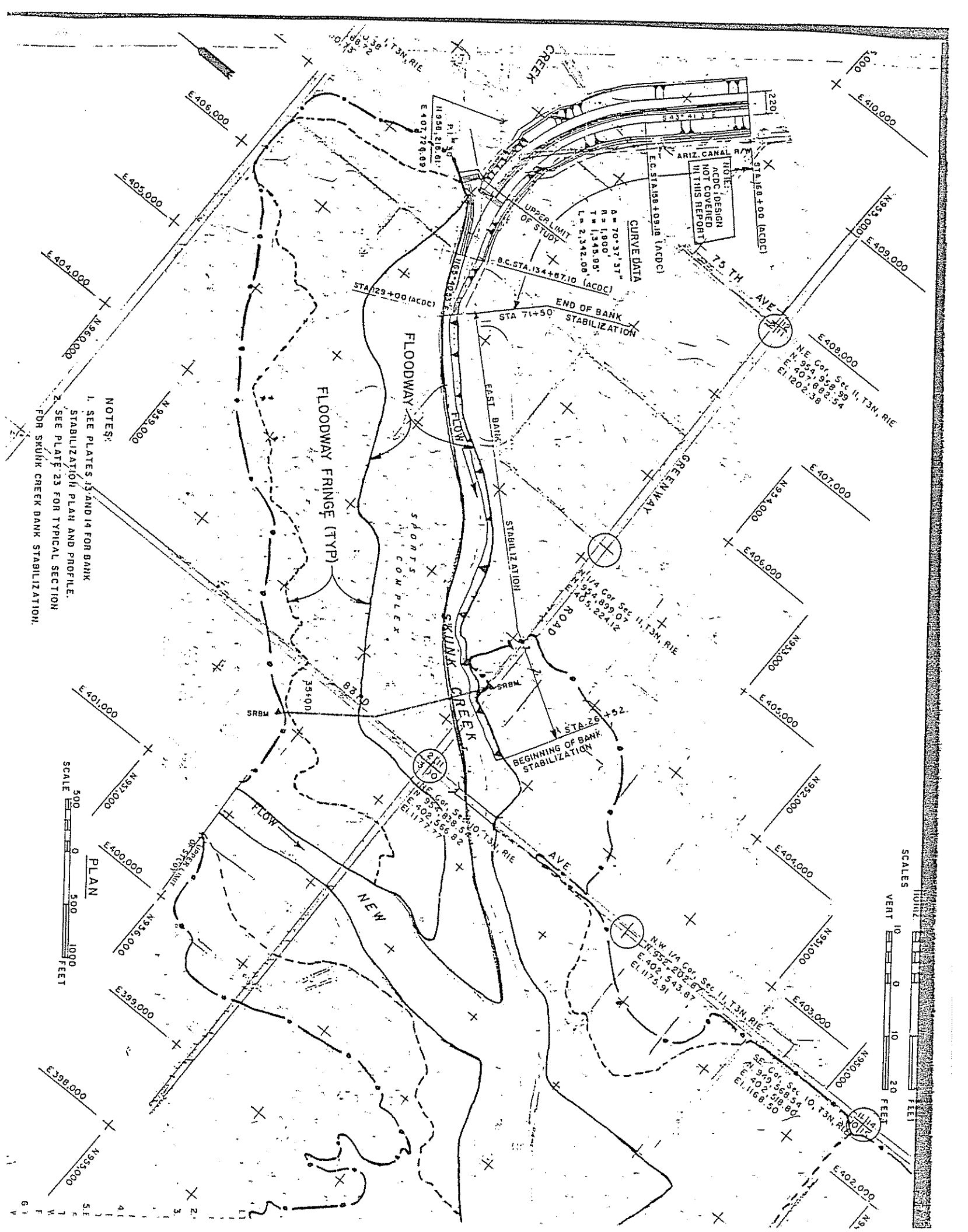
IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said City of Peoria, Arizona this 4th day of December, 1986.

  
City Clerk

(SEAL)

FLOOD CONTROL DISTRICT RECEIVED		
DEC 5 '86		
CH ENG		P & PM
DEP		HYDRD
ADMIN		LMG
FINANCE		FILE
C & O		MSM
ENGR		
REMARKS		





NOTES:  
1. SEE PLATES 13 AND 14 FOR BANK STABILIZATION PLAN AND PROFILE.  
2. SEE PLATE 23 FOR TYPICAL SECTION FOR SKUNK CREEK BANK STABILIZATION.

SCALE 500 0 500 1000 FEET  
PLAN

VERT 10 0 10 20 FEET  
HORIZ 10 0 10 20 FEET

PROJECT: AZM-600-0-205PE  
SECTION: Northern Avenue  
to Bell Road

RESOLUTION

BE IT RESOLVED on this 26 day of November, 1986, that I Charles L. Miller, as Director, ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the State of Arizona that the DEPARTMENT OF TRANSPORTATION, acting by and through the Highways Division enter into an Intergovernmental Agreement with the Flood Control District of Maricopa County and the city of Peoria for the purpose of design, construction and maintenance of channelization of Skunk Creek from the confluence of the ACDC Channel to the Outer Loop Highway (near the confluence with New River) within the City of Peoria.

THEREFORE, authorization is hereby given to draft said Agreement which, upon completion, shall be submitted for approval and execution by the Chief Deputy State Engineer.



CHARLES L. MILLER, Director  
Arizona Department of Transportation

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

RECOMMENDED BY:

D. E. Sagramoso 11-7-86  
D. E. Sagramoso, P. E. Date  
Chief Engineer and General Manager

APPROVED AND ACCEPTED:

By: George Campbell  
Chairman, Board of Directors

ATTEST:

By: Cherie Pennington  
Clerk of the Board

This Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

[Signature]  
General Counsel

11-7-86  
Date

CITY OF PEORIA

APPROVED AND ACCEPTED:

By: Ronald S. Travers  
Mayor, City of Peoria

ATTEST:

By: James Ramsey  
City Clerk

The foregoing Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the powers and authority granted to the City of Peoria under the laws of the State of Arizona.

Ronald Z. Keiper 11/20/81  
City Attorney Date



Attorney General  
1275 WEST WASHINGTON  
Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR86-2117, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 8th day of December 1986.

ROBERT K. CORBIN  
Attorney General

Albert Morgan  
Assistant Attorney General  
Transportation Division